



38 Hungerford Street -- Hartford, CT 06106 -- www.ctrestaurant.org
Phone: (860) 278-8008

Testimony Before the Labor & Public Employees Committee

March 5, 2015

**SB 858 AN ACT CONCERNING EMPLOYEES WHO CUSTOMARILY AND REGULARLY RECEIVE GRATUITIES AND THE
MINIMUM FAIR WAGE**

The Connecticut Restaurant Association represents over 600 restaurants and affiliated businesses across the state. Our members range from quick serve to casual to fine dining establishments. The Connecticut hospitality industry employs an estimated 145,000 people, making up 9% of our states' workforce. Restaurants are a driving force in the state's economy and generate tremendous tax revenue.

The CRA opposes SB 858, AAC Employees Who Customarily and Regularly Receive Gratuities and the Minimum Fair Wage.

Congress has for decades defined "wages" under Section 203(m) of the Fair Labor Standards Act (FLSA) to include not just cash, but certain other credits and benefits that employees receive as a result of their employment, including tip income. Tip-earning employees can be among the industry's higher-earning employees, earning a median of \$12 to \$17 an hour in tips, according to recent National Restaurant Association research. Employees and employers pay taxes on those tipped wages. That's why section 203(m) of the FLSA lets employers apply a limited portion of the tip earnings employees receive because of their employment towards the employer's obligation to pay tipped employees the minimum wage. This is called taking a "tip credit." Employers may take a tip credit only under strict conditions.

Connecticut law currently permits employers to pay a tipped employee a minimum cash wage of at least \$5.78 an hour and take a tip credit of up to \$3.37 an hour (i.e., the difference between the \$9.15 minimum wage and the \$5.78 cash wage.) If an employee's tips fall below the maximum possible tip credit- \$3.37 an hour under state law- the employer is responsible for making up the difference by paying any additional cash wages needed to bring the employee up to the required minimum wage. Thus, a tipped employee will never be paid below the minimum wage.

Connecticut currently has one of the highest minimum and tipped wages in the country. Eliminating the tip credit forces restaurant operators to increase the cash wage to certain employees while at the same time virtually guaranteeing no wage increase for others.

TIPPED EMPLOYEES' WAGES: MYTHS & FACTS

Myth #1: Tipped Employees are Paid a "Subminimum Wage" of \$5.78 an Hour.

FACT: There is no subminimum wage. The minimum wage for tipped employees is the exact same as the minimum wage for every other employee in Connecticut: \$9.15. The employer must ensure that the tipped employee earns at least \$9.15 an hour, between the employee's tip earnings and the employer-paid cash wage. It is not legal for any employee to earn only \$5.78 per hour.

Myth #2: Customers are Subsidizing Restaurant Employees' Wages.

Fact: Restaurant employers invest in their businesses to provide the conditions that enable employees to earn tips. The tip credit system was created and its safeguards put in place decades ago because lawmakers recognized that tipped employees receive tips due to the jobs their employers provide for them. Tipped employees receive additional wages in the form of tips given to them by their employers' guests. This money is NOT given to other employees. That's why the law treats tipped and non-tipped employees differently for wage purposes.

Myth #3: Tipped Employees Earn Poverty-Level Wages.

Fact: Most tipped employees are far from minimum-wage earners. Server positions in restaurants provide opportunity, flexibility and, often, very competitive pay. Recent National Restaurant Association research shows that on a national level, restaurant servers earn a median hourly wage of between \$16 and \$22, counting both tips and employer-paid cash wages. Looking at tip income alone, entry-level servers earn a median of \$12 an hour in tips, with more experienced servers earning a median of \$17 an hour in tips, according to the research. NOTE: These figures represent overall averages; the hourly earnings of servers vary significantly based on the type of establishment and the average per-person check size.

Myth #4: Employers Abuse Wage-And-Hour Rules When They Pay Tipped Employees

Fact: Employers risk costly wage-and-hour lawsuits, significant back-pay requirements and stiff penalties if they take a tip credit without meeting all the legal requirements for doing so. There will always be a few who violate any law imposed on citizens or companies. However, most restaurant employers are not willing to break the law or jeopardize their businesses by failing to take the required steps for claiming a tip credit. The vast majority of restaurant operators follow the rules, designed as safeguards for tipped employees.